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Exclusive Marketing Rights Contracts — A New Generation of Governmental Contract

*By Jonathan B. Stone**

Pepsi is the official soft drink of San Diego. Coke is the approved beverage of Huntington Beach. By agreeing to exclusively sell Coke or Pepsi products, local governments have secured "signing bonuses," commissions, and other rewards. Similar rewards are offered by computer manufacturers, internet providers and other types of companies. These lucrative contracts — coveted by some and deplored by others — can potentially garner a local agency tens of millions of dollars, and are governed by a new generation of statutory, judicial, and economic measures.

How do these contracts work? Although the contracts can vary substantially, the most lucrative and common form can be illustrated by an actual contract between a school district and a soft drink company. The ten year contract guaranteed the soft drink company an opportunity to exclusively market its products on the campuses of a high school district. In addition to securing exclusive marketing opportunities through vending machines (and hopefully lifetime brand loyalty), the company also was permitted to include its advertising logo on scoreboards and at other select locations. The company also received promotional opportunities through vending machines (which include displays), the cups dispensed through the machines (which include logos), scholarship funds, and other devices. In exchange, the company provided the school district with an up-front payment of $1 million, and minimum annual payments of $350,000 which would increase if sales exceeded minimum thresholds. Under the contract, the district was guaranteed at least $4.5 million over ten years, although larger governmental agencies can potentially secure larger contracts.

In preparing an Exclusive Marketing Rights Contract, a local government must carefully consider the applicable bidding requirements, laws pertaining to impermissible advertising, and other considerations. Aside from these legal considerations, elected and appointed officials will certainly weigh the policy issues associated with these contracts and the possible response of their constituents.

I. BIDDING REQUIREMENTS

In considering the bidding requirements for Exclusive Marketing Rights Contracts, a practitioner must divide these contracts into two categories: (1) contracts where the government expends funds to purchase goods for its own use or for resale to those using its facilities; and (2) contracts where the government receives funds from a third party in exchange for permitting the third party to sell goods directly to the public through the governmental facilities.

The first category permits the government to profit directly from resales or to obtain discounted prices for products it directly uses. These contracts involve governmental expenditures, and therefore often trigger bidding requirements. The second category does not involve purchases and therefore will not trigger bidding requirements tied to expenditures. Instead, these contracts provide local governments with revenues through signing bonuses, commissions, and other forms of consideration. These contracts are less likely to trigger competitive bidding.

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A. Cities

A city generally contracts for supplies and materials using its local procedures. Typically, these local procedures require competitive bidding for purchases of supplies or materials exceeding a minimum threshold. An Exclusive Marketing Rights Contract involving a direct purchase by the government will ordinarily exceed this threshold and will therefore ordinarily require competitive bidding. However, contracts which do not require municipal expenditures — such as contracts where cities receive payments from a supplier in exchange for marketing rights — will ordinarily not require competitive bidding or an RFP process. Yet a broadly-framed ordinance — particularly an ordinance which triggers bidding based on the "value" of a contract — may require bidding although no governmental funds are directly expended. [2]

B. Counties

Like cities, counties generally award contracts for supplies and materials pursuant to local rules.[3] These rules are set by a county purchasing agent and ordinarily do not require bidding for contracts which generate revenue — such as contracts which produce income from commissions. However, the rules often require competitive bidding for contracts involving large expenditures, such as Exclusive Marketing Rights Contracts involving the acquisition of materials or supplies.

C. School Districts

The law applicable to school districts is more complex, and in fact changed effective January 1, 2000, due to the enactment of AB 117. AB 117, which added 35182.5 to the Education Code, changes the procedures for approving Exclusive Marketing Rights Contracts which vest companies with exclusive rights to sell "carbonated beverages throughout a district" or convey certain types of "exclusive advertising rights."

An Exclusive Marketing Rights Contract with these attributes may only be awarded after a school district engages in competitive bidding or solicits requests for proposals. In addition, a district must precede the contract with a public hearing at which it adopts a policy to "ensure that the district has internal controls" to protect the integrity of the public funds and to ensure that funds raised benefit public education."[4]

Other Exclusive Marketing Rights Contracts fall outside the scope of AB 117, including, for instance, contracts for sporting supplies or snack foods. However, these contracts can still require bidding if the school district purchases goods under the contract for its own use or resale. In contrast, contracts which provide a company with the opportunity to exclusively market its products (for instance snack foods sold through vending machines), probably do not implicate requirements for competitive bidding if the district simply receives a commission on the sales. For these contracts, statutory bidding requirements are arguably avoided because the district does not expend funds or make a purchase.[5]

Lastly, neither the bidding requirements of the Public Contract Code nor AB 117 expressly apply to contracts executed by student body organizations, such as an associated student body. A school district — through forming a "master associated student body" (a "Master ASB") for all student organizations — can arguably create an umbrella organization which could potentially secure the benefits of an Exclusive Marketing Rights Contract for the district's students without implicating the bidding requirements of AB 117 or the Public Contract Code. Rather, Master ASB's are permitted to award contracts through procedures which are established by the student body organization.[6] However, the propriety of this practice subsequent to the enactment of AB 117 is questionable and is certainly contrary to the spirit of the new law. Therefore, it is not advisable that a Master ASB be used as surrogate for a school district seeking to secure an Exclusive Marketing Rights Contract.

II. PERMISSIBLE ADVERTISING

Often Exclusive Marketing Rights Contracts combine the right to exclusively market a product with the entitlement to advertise the product to persons using the government's facilities. Thus, Exclusive Marketing Rights Contracts might permit a corporate logo to be added to a mural at a park or a product to be identified on a scoreboard at a stadium.

Although the seamless integration of advertising with commercial contracts may be relatively new, the use of governmental facilities for commercial advertising is not. In fact, the government has historically enhanced its revenue by using public facilities to communicate advertising. Thus, the United States Supreme Court has upheld the practice of affixing advertising to municipal buses and broadcasting radio commercials into commuter trains operating under a state franchise. In each case, the practice was sanctioned as lawful by the United States Supreme Court against challenges that the practice violated the First Amendment rights of those who were "captive" to the advertising.[7]

However, the advertising components of governmental contracts can also raise a discrete set of issues — independent of the First Amendment — which implicate the scope of powers allowed to a local government, and whether those powers include the power to sell advertising.

At minimum, advertising is permitted as an incidental aspect of an otherwise legitimate governmental function. The leading case in this area is *Dawson v. East Side High School.*[8] *Dawson* involved a for-profit company — "Channel One" — which provided schools with free video equipment so that teenage students, during class time, could view satellite-transmitted video programming

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including two minutes of paid advertising. Those challenging the use of Channel One argued that schools had no legal authority to execute a contract which exposed students to advertising. Although the court concluded that a school district could not enter into the "advertising business," the court held that a contract could provide a private company with advertising opportunities if the advertising opportunities were conveyed as an "incidental" consequence of the District's pursuit of a "valid educational purpose."[9] Further, AB 117 requires that a school board, prior to approving an Exclusive Marketing Rights Contract involving electronic equipment, make special findings if the contract requires the "dissemination of advertising to pupils."[10]

However, cities operate under a slightly different set of laws than school districts. Unless acting under an "express legislative sanction," a city has no authority to engage in an "independent business or enterprise - such as is usually pursued by private individuals."[11] This rule likely extends to the advertising business. However, an advertising component included in an otherwise lawful contract will likely be permitted in a contract if it is "subsidiary" and "incidental" to the lawful purpose of the contract and is not otherwise prohibited.[12]

In contrast to cities and school districts, counties have the broadest ability to engage in advertising and may, by ordinance, "provide for and regulate the sale of advertising space on county real or personal property *for the sole purpose of raising revenue for the county*."[13] This grant would likely permit most advertising associated with Exclusive Marketing Rights Contracts, but would not authorize the county to erect outdoor advertising structures, such as billboards, that are regulated by the Outdoor Advertising Act.[14]

III. RESTRAINT OF TRADE LAWS

Although an Exclusive Marketing Rights Contract can sometimes provide a single company with certain competitive marketing advantages, these advantages most likely do not transgress federal or state laws designed to protect competitive markets.

Under the *Parker* state-action doctrine,[15] local governments operating under "clearly articulated and affirmatively expressedî state policies are generally immune from federal anti-trust laws.[16] Exclusive Marketing Rights Contracts, particularly those executed by school districts, are authorized by state legislation, and may qualify for immunity under the *Parker* doctrine.[17] Equally important, the typical Exclusive Marketing Rights Contract (which only affects commercial transactions at government facilities) will not limit competition within the larger commercial and geographic markets necessary to produce a violation of federal anti-competition laws.[19] The courts will likely hold that Exclusive Marketing Rights Contracts, especially those resulting from the competitive process, do not rise to the level of "concertedî activity prohibited by the federal antitrust laws. Similar immunities exist under California law, such as the Cartwright Act[20], which shield local governments from most lawsuits involving restraints of trade.[21]

IV. BUSINESS CONSIDERATIONS

Governments interested in developing Exclusive Marketing Rights Contracts sometimes develop strategic plans to guide the process, such as Sacramento's cleverly-named "Capital Spirit" program. Public agencies also can hire agents to solicit marketing opportunities at a cost sometimes reaching 10% of the resulting revenue. However, lucrative contracts have also been developed using the attorneys and staff available to the agency.

In negotiating an Exclusive Marketing Rights Contract involving the placement of vending machines and the payment of commissions — the most common type of Exclusive Marketing Rights Contract — a public agency should address the following considerations, among others:

- Identify the "territory" in which the vendor has exclusive rights.
- Identify the "product categories" to which the exclusivity pertains.
- Create exceptions to the exclusive provisions, if desired, for special facilities such as airports, zoos, theatres, golf courses, convention centers, stadiums and land leased to private parties.
- Identify the existing contracts with competitors which would violate the exclusivity provisions and therefore must be excluded from the exclusive provisions of the contract.
- Specify nature and location of vending machines.
- Identify the party responsible for making electrical and other improvements necessary to accommodate the vending machines.
- Specify the minimum number of vending machines required by the contract, and which party must maintain those machines.
- Specify a process (and possible additional payments) for adding new machines.
- Identify the types of permitted signage and the location of the signage.
- Negotiate appropriate payments which may include signing bonuses, minimum annual payments and commissions.
- Specify price of which products will initially be sold and how those prices should be adjusted.
- Determine which party owns the vending machines, which party is responsible for removing the vending machines after the contract expires, and which party will restore the government's facilities to the original condition after the contract expires.

In addition, a contract should also include standard provisions relating to indemnities, insurance, and audits.

CONCLUSION

Exclusive Marketing Rights Contracts are emerging as a means to increase the government revenues while satisfying the commercial demands of those using governmental facilities. In an era of proliferating public-private partnerships, these agreements constitute a new generation of governmental contracts.

ENDNOTES

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1 However, larger contracts involving supplies or materials are governed by state law (as opposed to local procedures), if the supplies and materials will be used in public projects. Public Contract Code §20161 and §20162.

2 Further, at least one case has held that statutes — which require bidding for contracts involving expenditures exceeding a minimum threshold — can be

applied to contracts which do not directly involve expenditures, but involve an exchange of consideration. *Boydston v. Napa Sanitation District* (1990) 222 Cal.Ap.3d 1362, 272 Cal.Rptr. 458. However, the unusual facts of this case limit its application. The principles announced in *Boydston* probably do not extend to Exclusive Marketing Rights Contracts which provide income to agencies.

3 Most counties use purchasing agents and purchase supplies and materials in accordance with the rules set by the purchasing agent. Government Code §25502. However, counties which do not use purchasing agents are required to use competitive bidding to award most contracts involving supplies and materials. Government Code §25480,

4 Education Code §35182.5(a)(1).

5 Competitive bidding is required only for "contracts involving an expenditure of more than fifty thousand dollars. Public Contracts Code §20111.

6 Education Code section §48333(b), see also 14 Cal.Atty.Gen.Ops 210, 211.

7 Thus, municipal buses may carry advertising (*Lehman v. City of Shaker Heights* (1974) 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770) and commuter trains operating under a state franchise may expose riders to commercial radio broadcasts (*Public Utilities Commission of the District of Columbia v. Pollak* (1952) 343 U.S. 451, 72 S.Ct. 813, 96 L.Ed. 1068).

8 (1994) 28 Cal.App.4th 998, 34 Cal.Rptr.2d 108.

9 Arguably, the limitations of *Dawson* have been relaxed by AB 117 which, in part, provides that "the governing board of a school district may sell advertising - on a nonexclusive basis."

10 Effective January 1, 2000, the Education Code provides that a school district may not issue a contract "for electronic products or services that requires the dissemination of advertising to pupils unless the governing board," following a public hearing, makes a variety of factual findings. Among the required findings, the school board must conclude that it cannot afford to provide the electronic product or service unless it contracts to permit the dissemination of advertising to pupils. Further, at a parent's request, a school may not expose a pupil to any "program that contains advertising," and must permit a parent to remove his or her child from the classroom during the program.

11 *Ravettino v. City of San Diego* (1943) 70 Cal.App.2d 37, 44.

12 *Von Schmidt v. Widber* (1894) 105 Cal. 151, 157.

13 Gov't Code §26109.

14 *Id.* see also Bus. & Profess. Code §5200 et. seq.

15 *Parker v. Brown*, (1943) 317 U.S. 341.

16 15 U.S.C. 1 et seq. The Parker doctrine was conditionally extended to municipalities in *Lafayette v. Louisiana Power & Light Co.* (1977) 435 U.S. 389

17 A.B. 117 recently added Education Code §35182.5 which creates a procedure for school districts to award certain types of exclusive market contracts. Cities and counties seeking immunity under the *Parker* doctrine would be required to rely on more general statutory authorizations.

18 *Bridges v. MacLean-Stevens Studios*, 35 F. Supp. 2d 20, 27-28 (D. Me. 1998); *Burns v. Cover Studios, Inc*, 818 F. Supp. 888, 892 (W.D. Pa. 1993)

19 *Stephen Jay Photography, Ltd. v. Olan Mills*, (4th Cir. 1990) 903 F. 2d 988, 994. Municipalities, including school districts, are immune from monetary damages stemming from federal antitrust causes of action pursuant to the Local Government Antitrust Act of 1984, 15 U.S.C. §35-36.

20 Cal. Bus. & Prof. Code §16700 et seq.

21 *People v. City and County of San Francisco* (1979) 92 Cal.App.3d 913, 920-21.

MCLE SELF-ASSESSMENT TEST

1 New laws require school districts to use competitive bidding or an RFP process in the award of all forms of Exclusive Marketing Rights Contracts.

❑ True ❑ False

2 Exclusive Marketing Rights Contracts are unlikely to transgress federal anti-trust laws if the limitation on competition is restricted to the government's facilities.

❑ True ❑ False

3 Counties are generally permitted to adopt their own bidding procedures for the purchase of supplies or materials if the County uses a "purchasing agent".

❑ True ❑ False

4 Contracts which generate revenue for a local agency are usually subject to the same bidding laws as apply to contracts involving the expenditure of public funds.

❑ True ❑ False

5 An advertising component promoting the interests of a third party may be included in a city contract if the advertising component is subsidiary and incidental to the lawful purpose of the contract.

❑ True ❑ False

6 School districts which receive income from Exclusive Marketing Rights Contracts may spend the money without any statutory constraint.

❑ True ❑ False

7 School districts must hold public hearings prior to approving certain Exclusive Marketing Rights Contracts, such as contracts involving the exclusive sale of carbonated beverages.

❑ True ❑ False

8 School districts may award Exclusive Marketing Rights Contracts for carbonated beverages using either a process soliciting proposals or a process soliciting competitive bids.

❑ True ❑ False

9 Local governments are always immune from federal anti-trust laws.

❑ True ❑ False

10 Exclusive Marketing Rights Contracts should properly identify the product lines and territory to which exclusivity pertains.

❑ True ❑ False

11 The United States Supreme Court has upheld advertising activities of public agencies, such as advertising affixed to municipal buses, against First Amendment attacks.

❑ True ❑ False

12 A new statute authorizes school districts to require students to watch electronic programming containing advertising even when the parents of the student object.

❑ True ❑ False

13 Counties are permitted to sell certain forms of advertising for the sole purpose of raising revenue.

❑ True ❑ False

14 Some Exclusive Marketing Rights Contracts provide public agencies with a share of the sales revenue resulting from the contract.

❑ True ❑ False

15 In general, cities may engage in any activity permitted to a private person, and may freely participate in profit-making enterprises.

❑ True ❑ False

16 The Public Contracts Code obligates cities to competitively bid all large contracts involving the purchase of supplies or materials.

❑ True ❑ False

17 Associated student body organization's must award contracts using procedures established by the school district served by the organization.

❑ True ❑ False

18 The new legislation addressing a school district's Exclusive Marketing Rights Contracts applies to all forms of Exclusive Marketing Rights Contracts, including Exclusive Marketing Rights Contracts involving sporting goods and snack foods.

❑ True ❑ False

19 School districts may expose students to advertising in exchange for free computer or electronic equipment only if the school board determines that it could not otherwise afford to purchase the computers or electronic equipment.

❑ True ❑ False

LOCAL AND STATE REGULATION OF FIREARMS DEALERS

*by: Steven B. Quintanilla, Esq. & Anna Gamboa, Paralegal**

I. THE PERCEPTION

There is a perception that gun violence in this country has become one of the major social crisis of our time. Gun violence—once associated with wars between nations—has now become associated with classmates shooting classmates, coworkers shooting coworkers, and family members shooting family members. We have become accustomed to hearing and reading about gun violence in the school yard, the office and in the home—places we all once thought were safe refuges from violence. In short, whether the perception is based upon fact or fiction, it is clear that the phenomenon of gun violence has now become a personal concern of the average American living in the average American community. And, it is clear that as long as gun violence continues to erupt in familiar places, gun violence will continue to haunt our collective social and political conscience until we resolve the problem or until we perceive the problem to be solved.

"The horrific shootings at Columbine High School on April 20 have touched a nerve with the American public. Unlike any other tragedy, the events in Littleton have triggered a chain reaction of events throughout the United States. Within hours after the shootings, state legislatures immediately suspended NRA-sponsored bills and passed bills on sensible gun regulations. The U.S. Senate passed a gun control package and the House is expected to follow. Most politicians have cited the shootings at Columbine High as the single reason why they are now acting." The Western Progress Report, "Preventing Gun Violence" (Summer, 1999).

II. LEGAL COMMUNITY AGAINST VIOLENCE

It is often a tragic event such as "Columbine" that spurs the American people to act. One such tragedy occurred on July 1, 1993, when John Lugi Ferri, 55, opened fire with two assault weapons, a pistol and hundreds of rounds of ammunition, at the San Francisco law offices of Pettit and Martin, killing eight people and wounding six others before taking his own life. This horrific crime launched the Legal Community Against Violence ("LCAV"), a grassroots organization that is working to reduce gun violence in California through education, legislation and litigation.

Immediately after its formation, LCAV created the Local Ordinance Project which produced a publication "Addressing Gun Violence Through Local Ordinances, A Legal Resource Manual for California Cities and Counties", known as the Local Ordinance Manual. This user-friendly guide has been widely distributed to numerous local officials throughout the state. The publication's objective is to educate members of city councils and boards of supervisors, city attorneys, county counsel, law enforcement officers and public health officials, about legislative efforts state wide that are intended to reduce gun violence at the local community level.

In addition, LCAV provides free legal advice and technical assistance to public agencies and their political representatives who are interested in adopting ordinances to reduce gun violence. LCAV also provides pro bono litigation assistance to agencies which have been sued by gun proponents for adopting a gun-violence prevention ordinance.

III. LOCAL COMMUNITY REACTION

As an expression of frustration over the perceived failure of the federal and state governments' willingness to address the increased level of gun violence in this country, local politicians have courageously introduced a number of innovative gun violence prevention ordinances, many of which have passed even in the face of fierce political opposition by the powerful gun lobby.

According to LCAV's latest survey, as of June 1, 1999 local politicians of many of California's cities and counties had introduced and adopted more than 200 firearm-related ordinances. In some instances, the voters even got into the political fray by adopting gun sales tax ordinances in the cities of Berkeley, Oakland and San Leandro, and a junk gun sales ban ordinance in the City of Pleasanton.

Although the case law is still developing on the issue regarding the scope of local authority over firearms and ammunition regulations, it is clear that the extent of that authority is much broader than one would have expected just five years ago. It is obvious that not only has the political and social climate changed over the last decade regarding local gun control regulations, but so has the judicial climate. More and more court opinions are being decided in favor of local agencies on the issue of local gun violence regulations and this is only encouraging local politicians to become even more and more aggressive and innovative in their approach to introducing more and more gun violence reduction schemes. Naturally, with the introduction and passage of more innovative ordinances, there will certainly be more litigation and more legal interpretations regarding a local agency's authority to attempt to control gun violence at the local community level.

A. Saturday Night Specials

The City of West Hollywood bravely took that first step toward regulating firearms at the local level. The City adopted a direct ban on the sale of certain firearms—firearms that were poorly made, easily concealable, lacked certain safety features and were disproportionally used

in crime. These firearms, commonly known as "Saturday Night Specials" or "junk guns" could no longer be sold in the City of West Hollywood. The purpose of the ordinance, however, may have had more to do with sending out a message of intolerance for and frustration with increasing gun violence in the country than it did with actually halting the sale of unsafe guns within the city limits. The other purpose of the ordinance may also have been to send out a powerful message to the gun lobby that local communities were about to get into the gun control debate that has long been limited to the legislative halls and conference rooms of Sacramento and Washington D.C.

The result of the adoption of such an unprecedented regulation was that the California Rifle and Pistol Association quickly filed a lawsuit against West Hollywood on the grounds that the ordinance was invalid under the theories of preemption, due process and equal protection. West Hollywood, however, prevailed in the litigation, and soon thereafter, the number of Saturday Night Special ordinances incorporated in the codes local jurisdictions skyrocketed to 45.

On August 27, 1999, Governor Davis approved SB 15, effective January 1, 2001, which prohibits the manufacture, importation and sale of "unsafe handguns" and requires handguns made or sold in California to meet basic safety tests. This newly enacted state law may preempt local authorities from banning the sale of unsafe handguns such as the Saturday Night Special or otherwise setting handgun safety standards.

B. Assault Weapons and High-Capacity Ammunition Magazines

On July 19, 1999, Governor Davis signed into law SB 23 which bans the manufacture, sale, transfer or possession of any semiautomatic assault weapon and the sale or transfer of rapid-fire ammunition magazines that can hold more than 10 rounds. The ban, which became effective January 1, 2000, likely preempts cities and counties from further regulating these areas.

C. Child-Safety Locks

More than 30 jurisdictions have passed ordinances requiring a trigger lock, or similar child proofing or disabling device to prevent intentional discharge, be sold with all handguns.

On August 27, 1999, Governor Davis signed into law AB 130 which provided that, effective January 1, 2002, all firearms sold or transferred in California be accompanied by a firearms safety device approved by the Department of Justice. Thus, cities and counties are now likely preempted from imposing regulations that set handgun safety standards.

D. Regulating Where Firearms Dealers May Operate

Anyone desiring to sell firearms must have a federal firearms licence unless that individual is selling a private collection, not as a regular business. To obtain the federal licence, the applicant has to simply swear that he or she: (a) is not under indictment for a felony, (b) has not been convicted of a felony, (c) is not a fugitive from justice, (d) is not an unlawful user of any controlled substance, (e) has not been adjudicated mentally defective or been committed to a mental institution, (f) has not been dishonorably discharged from the armed forces, (g) is not an undocumented alien, (h) has not renounced his or her citizenship, and (i) is not subject to a restraining order for harassing, stalking or threatening an intimate partner or child or such partner. If all are answered in the negative, the applicant can obtain the federal licence to personally engage in the sale of firearms at home, unless the local municipality provides otherwise.

More than thirty jurisdictions have either expressly prohibited firearms dealers from operating in residential zones or areas, or from qualifying as a "home occupation."

Approximately fifteen local jurisdictions have adopted laws which expressly prohibit firearms dealers from operating near sensitive areas such as day care facilities, schools, parks, places of worship or community/recreation centers. All of these jurisdictions either prohibit or limit firearms dealers in residential neighborhoods, and many others prohibit dealers from operating near massage parlors, cardrooms, adult entertainment establishments, businesses selling alcohol, and/or other firearms dealers.

In Cathedral City, firearms dealers may only locate in "Commercial Business Park" zones subject to the requirement that the establishment will not be located within "1,000 feet from a church or other religious institution, day-care center, game arcade, halfway house, residence, residential zoned area, private or public park, group home, or other firearm dealer establishment." The City of Lafayette was sued over this issue too, also on preemption grounds, but the court held that state law did not preempt a city from requiring firearms dealers to operate only in commercial areas.[1]

E. Liability Insurance

An increasing number of local jurisdictions now require firearms dealers to carry liability insurance. The City of Lafayette was sued over this issue on preemption grounds, but the court held that state law did not preempt a city from requiring firearms dealers to obtain liability insurance.[2]

During the entire term of a firearms dealer permit, the dealer is required to maintain an effective policy of insurance in a form approved by the City Attorney and issued by an insurance company approved by the City. The policy must insure the dealer against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm, or any other operations of the business and the policy must name the City, its officers, employees and agents as additional insureds. Typically, the limits of liability must be at least $1,000,000 for each incident of damage to property or incident of injury or death to a person. In addition, the policy of insurance must contain an endorsement providing that the policy shall not be canceled until written notice has been given to the City Attorney at least 30 days prior to the time the cancellation becomes effective. If the policy of insurance expires, and if no additional insurance is obtained, the firearms dealer establishment permit is deemed revoked.

F. Records of Ammunition Sales

At least 11 jurisdictions require firearms dealers to keep records of all ammunition sales. Most ordinances that mandate ammunition recordkeeping require licensed firearms dealers

to maintain records of all ammunition sales and transfers, including the right thumb print of the purchaser or transferee and his or her name, address, date of birth, driver's license information and signature, the date of purchase, and the brand, type and amount of ammunition purchased or transferred.

G. Performing Criminal Background Checks

A number of jurisdictions have enacted laws that generally prevent firearms dealers from obtaining a permit to sell firearms if they, and/or any of the their agents, officers or employees who handle or control firearms, are prohibited from possessing firearms under the California Penal Code. Generally, individuals are prohibited from possessing firearms if they have been convicted of certain crimes. Background checks are typically conducted by the agency's law enforcement department to determine if an applicant for a firearms dealer permit is qualified. The process generally involves the submission of the applicant's fingerprints, a recent photograph, and a signed authorization for the release of pertinent records.

The Penal Code offenses which would preclude an individual from being issued a permit include but are not limited to the following crimes:

- Threatening a public officer, employee or school[3] or threatening the life of or serious bodily harm to certain public officials[4]
- Removing or taking or attempting to remove or take a firearm from a public officer or police officer[5]
- Bringing or possessing a prohibited weapon or firearm in a state or local public building[6]
- Supplying, selling, of giving possession of a firearm to a person who then uses the firearm in commission of a felony while actively participating in a criminal street gang[7]
- Assault or battery against a peace officer, emergency personnel, process server or animal control officer who is engaged in the performance of his or her lawful duties[8]
- Assault with a stun gun or taser[9], or a deadly weapon[10]
- Assault upon a school employee with a deadly weapon or with a stun gun or taser while he or she is engaged in the performance of his or her official duties[11]
- Shooting at an inhabited dwelling house or at an occupied building, motor vehicle, aircraft or camper[12] or discharging a firearm at an unoccupied motor vehicle or an uninhabited building or dwelling house[13]
- Willfully discharging a weapon in a grossly negligent manner[14]
- Drawing or exhibiting an imitation firearm in a threatening manner[15]
- Possessing a firearm in a school zone or for discharging or attempting to discharge a firearm in a school zone[16]
- Manufacturing or causing to be manufactured, importing, keeping for sale, or offering or exposing for sale or giving, lending or possessing or concealing a prohibited weapon or firearm[17]

In many local ordinances, evidence that the dealer knowingly sold a firearm to any person convicted of any of the above offenses is grounds for denial of a firearms dealer permit.

H. Business Tax

Pursuant to Proposition 218 adopted in 1996, all general taxes imposed by local governments after 1995 require voter approval. The residents of Oakland, Berkeley, San Leandro, El Monte, Los Angeles, and San Francisco City and County voted to enact a tax on businesses selling firearms.

I. Miscellaneous Regulations

Cities are also adopting a number or other regulations which pertain specifically to the management and operation of firearms dealer establishments. These regulations include but are to limited to the following:

- Permitting representatives of the City, including but not limited to the Police Department to inspect the premises of a firearms dealer establishment for the purpose of insuring compliance with the law at any time it is occupied or open for business.
- Requiring that all off-street parking provided for, and entrances to and exits from, the firearms dealer establishment be illuminated from dusk to closing hours with adequate lighting.
- Requiring the installation of a surveillance system that visually records and monitors all off-street parking areas provided to, and entrances to and exits from, the firearms dealer establishment during all times that the business is open or occupied for business.
- Requiring the surveillance system to provide continuous recording for at least a 24 hour period, with all recordings maintained for a minimum of 72 hours.
- Requiring the immediate production of all surveillance recordings for all or any portion of the previous 72-hour period upon request of the local law enforcement department.
- Requiring a sign to be posted at the main entrance of the firearms dealer establishment identifying the name of the firearms dealer establishment.
- Requiring signs to be posted in the parking area, near the entrance of the premises, and at a conspicuous location inside the firearms dealer establishment in such a manner as to notify the public that the exterior of the establishment is subject to recorded surveillance in cooperation with the local police department.
- Requiring an unobstructed view of the reception area of the establishment from the exterior of the building.
- Limiting the hours of operation to 9:00 p.m. to 7:30 p.m.

IV. STATE'S RESPONSE

As discussed above, Governor Grey Davis has signed into law bills which prohibit the manufacture and sale of assault weapons and unsafe handguns and require trigger locks on firearms sold in California. Additionally, the Governor signed into law AB 202, which restricted the sale of handguns to one per month unless the buyer is a legitimate gun collector and AB 295 which increased the regulation and oversight of gun shows. Governor Davis has indicated, however, that he will refrain from signing any additional handgun legislation into law until he receives feedback from law enforcement officials and prosecutors on the effectiveness of the above newly enacted laws. In the meantime, the Governor is leaving it up to municipalities and other local agencies to regulate those areas of handgun controls in which they believe local regulation is necessary.

V. THE FUTURE

The best predictor of the future sometimes requires us to look to the past. However, a look at gun violence statistics from recent years could lead any reasonable person to predict that unless society immediately addresses the root cause of gun violence, our children may inherit a very violent and unstable society in which to live.

For example, guns continue to play a pivotal role in violent crime and in family violence. The Johns Hopkins Center for Gun Policy and Research reported that of all the homicides in 1997, 68% occurred by firearm and where the type of firearm involved in the homicide was known, 86% were committed with a handgun. In homes with guns, the homicide of a household member is almost 3

times as likely to occur than in homes without guns and, when guns are present, assaults against family and intimates are 12 times more likely to result in death than assaults against family and intimates not involving firearms.[19]

With respect to children and young people, there is evidence that they are disproportionately affected by gun violence. In 1997, firearms were the third leading cause of death for 10-14 year olds and the second leading cause of death for 15-24 year olds. The firearm death rate among America's children age 14 and younger is nearly 12 times higher than the combined rate in 25 other industrialized nations.[20]

There also appears to be a strong link between the risk of suicide and gun ownership. The Centers for Disease Control and Prevention reports that people living in households in which guns are kept have a risk of suicide that is 5 times greater than people living in households without guns. Between 1980 and 1994, the overall suicide rate for persons aged 15-19 increased by 29%; the increase in firearm-related suicides accounted for 96% of the increase in the overall suicide rate.[21] The Johns Hopkins Center for Gun Policy and Research reports that in 1997, 57% of all gun deaths were suicides and 58% of all suicides were committed with handguns.[22]

And, finally with respect to health costs, the numbers of people who suffer gun-related injuries in the United States each year is staggering and so is the cost to treat those injuries. The Johns Hopkins Center for Gun Policy and Research reports that in the one year period from June 1994 though May 1995, an estimated 87,844 people were treated for nonfatal firearm-related injuries in emergency rooms throughout the United States.[23] The lifetime medical costs associated with firearm injuries and deaths in 1994 was 2.3 billion. In 1999, it is estimated that approximately 49% of the costs of gun-related injuries and deaths is paid by the public.[24,25]

VI. CONCLUSION

There is no doubt that the debate over firearms will continue to be a part of the daily American dialog in both the social and political arena. The debate is also likely to remain heated as society struggles to reconcile its concepts of personal liberty with its ideals of social responsibility. Gun violence is no longer a distant problem associated with overseas wars. It has become a problem of local concern that has now been placed in the hands of local officials. And, as long as gun violence is perceived to be local problem, we should expect that local political leaders will look to the legal community for innovative ideas in the search for the most effective and expedient means to resolve the problem.

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ENDNOTES

1 *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109
2 *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109
3 Penal Code §71
4 Penal Code §140
5 Penal Code §148
6 Penal Code §171b
7 Penal Code §186.28
8 Penal Code §241
9 Penal Code §243
10 Penal Code §244.5
11 Penal Code §245
12 Penal Code §245.5
13 Penal Code §246
14 Penal Code §247
15 Penal Code §246.3
16 Penal Code §417.4
17 Penal Code §626.9
18 Penal Code §12020
19 Johns Hopkins Center for Gun Policy and Research, Fact Sheet on Gun Injury and Policy.
20 Johns Hopkins Center for Gun Policy and Research, Fact Sheet on Gun Injury and Policy.
21 Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Fact Sheet for Firearm Injuries and Fatalities.
22 Johns Hopkins Center for Gun Policy and Research, Fact Sheet on Gun Injury and Policy.
23 Johns Hopkins Center for Gun Policy and Research, Fact Sheet on Gun Injury and Policy.
24 Cool PJ, Lawrence BA, Ludwig J, Miller TR. The medical costs of gunshot injuries in the United States. JAMA 1999; 282:447-454.

— The Public Law Section —

Increasing Access to Internet Legal Resources

The Public Law Section was awarded a grant from the Foundation of the State Bar to develop an Internet site which will assist lawyers and non-lawyers alike, listing over 500 websites which provide access to legal groups such as racial, religious, and political minorities. The website, when fully developed, will also contain lists of addresses for Internet search engines and directories and searchable versions of the United States and California Constitutions, statutes and cases. Moreover, the site will contain information on reaching the various legislative branches of the state and federal government. Please check the California State Bar website at *www.calbar.org* for further information on this exciting project.

Public Employee Benefits:

Understanding Section 4850 Basics

*By Pamela Owens**

This article provides a guide for understanding an often-misunderstood benefit. Labor Code Section 4850 provides "full salary" for "active public safety" employees in lieu of temporary disability payments. Within this article, the following commonly asked questions will be answered:

- Who are active public safety employees?
- What is "full salary"?
- How long must it be paid?
- What offsets may be used to reduce "full salary"?
- Must the Section 4850 benefit be continuous?
- What effect do resignation, retirement, termination and layoff have on this benefit?

Who Are Public Safety Employees?

To qualify under Labor Code Section 4850, an employee must:

- Have an industrial injury;
- Be a member of the Public Employees Retirement System (PERS) or subject to the County Employees Retirement Law of 1937 (CERL) or be an employee of a county, city or district that elects Section 4850 benefits;
- Have active law enforcement, firefighting, and/or active public safety duties. (Length of service is not a qualifying factor)

Under Section 4850, employees specifically enumerated as having active law enforcement or active public safety duties are city policemen, firefighters, sheriff's deputies, and full-time, year-round county lifeguards.[1] In addition, sheriff's employees, and inspectors, investigators, or detectives in a district attorney's office may come under Section 4850 if they are exposed to the same kind of "active law enforcement/public safety" risks as policemen, firefighters, etc…[2] Under Labor Code Sections 4800 through 4806, "safety employees" may also qualify for full-salary benefits, including members of the Department of Justice falling within the "state peace officer/firefighter" class, harbor police officers employed by the San Francisco Port Commission, members of the University of California Fire Department falling within the active "firefighting and prevention service" class, members of the University of California Police Department falling within the "law enforcement" class, and sworn members of the California Highway Patrol disabled by a single injury (on or after January 1, 1995), excluding disability resulting from cumulative injuries. In general, sworn officers are considered "active law enforcement," while non-sworn officers are not. However, the final determination of whether a non-sworn employee or a public safety officer qualifies will be based upon his or her actual duties. Specifically excluded from Section 4850 benefits are employees in the above departments whose primary duties are telephone operator, clerk, stenographer, machinist, and mechanic per subsection (b).

The Worker's Compensation Appeals Board (WCAB) has jurisdiction to determine whether an employee falls within Section 4850. This determination is made by considering the actual job duties of an employee, rather than his or her classification.[3] In *Biggers v. WCAB*, a bailiff, classified as a correctional officer rather than a deputy sheriff, was found ineligible by the workers' compensation judge based upon her classification. The WCAB remanded the matter for the judge to consider the applicant's actual duties. Ultimately, the WCAB held that the bailiff, whose main duties included providing security in the courtroom, taking people into custody, and transporting prisoners to and from jail, was ineligible for Section 4850 benefits, because her duties were more akin to those of a jailer than those involving active law enforcement. The WCAB's decision was overturned on January 25, 1999 by the Court of Appeal. The court stated that "like police and firefighters, courtroom bailiffs also protect the public… Their contact with inmates exposes them to hazards…of the same kind as those faced by sheriffs' deputies…" The court held that a bailiff's functions in maintaining order in the courtroom and taking responsibility for the security and custody of inmates are "within the scope of active law enforcement service."[4]

Likewise, a paramedic, who performed emergency medical services that were also occasionally performed by city firefighters, and who lived, trained, and drilled with other members of the fire department and reported to the scene of every fire in firefighter's gear, assumed some of the physical and emotional risks that firefighters encounter and was entitled to Section 4850 benefits.[5]

What is "Full-Salary"?

Under Section 4850, a qualified employee is given a leave of absence while disabled without loss of salary up to one year or until his or her disability retirement. This benefit is in lieu of temporary disability payments or maintenance allowances. In order to determine what "full-salary" is, the base salary of the employee should be considered first. Next, questions concerning whether holiday pay or sick leave are included in "full-salary" are determined by careful consideration of the employee's local contract, collective bargaining agreement (CBA), or memorandum of understanding (MOU).[6]

For instance, in *Mannetter v.County of Marin*, under local contract, the qualified employee was entitled to holiday pay only if he was assigned to work that holiday and actually worked on that day. Therefore, because the disabled claimant was on a leave of absence and unable to work that holiday, he was not entitled to time-and-a-half pay. However, when a qualified employee under local

contract is entitled to holiday pay throughout the year whether he or she works the holiday or not, the employee must get the "holiday pay" as part of his or her Section 4850 "full-salary" calculation.[7] The *Mannetter* court reasoned that an employer may not eliminate or curtail any benefit that an employee is entitled to at the time he or she sustains the industrial accident. The court stressed that while there is a strong public policy to fully indemnify loss resulting from industrial accidents, it does not demand that an employee be indemnified for benefits that he or she might have received. Consistent with this reasoning, an employer may not reassign an injured worker to a position that eliminates holiday pay that the employee had been entitled to at the time of the injury.[8]

Whether sick leave may be used to defer retirement by an applicant or used by the employer as a tool for reducing Section 4850 benefits depends upon how sick leave is defined by the local contract. Where sick leave is defined in the contract as only for non-service-connected illness or injury, an employee is not entitled to be placed on sick leave for a service-connnected injury.[9]

What Offsets May be Used to Reduce "Full-Salary" Benefits?

Earnings from self-employment or a second employment earned while on a Section 4850 leave of absence may be deducted from the "full-salary" that the employer is paying to the claimant.[10] The amount credited is the net earnings of claimant, after subtracting expenses reasonably related to the production of self-employment.[11]

Must a Section 4850 Benefit Be Continuous?

While Section 4850 benefits are to be paid for up to one year if the claimant remains disabled or until disability retirement, such benefits need not be continuous. The year (or less) during which workers' compensation is to be paid is the aggregate periods of temporary disability due to a single injury.[12] For instance, if an employee is off work for two months with an injury and then returns to work for eight months, only to be placed off work again for the same injury, the two months of Section 4850 benefits previously paid will be aggregated toward the one-year period. Thus, the employer may pay ten months of benefits on that same injury— the eight-month work interval where benefits were not paid is ignored. Furthermore, Section 4850 benefits can also be extended when the employee works part time or light duty. For instance, if the employee works half time, then his or her Section 4850 benefits may run twice as long.

If a qualifying applicant injures one part of his or her body and later injures a different part of his or her body while the first Section 4850 one-year benefits is running, it is possible to have multiple one-year periods. In other words, the two consecutive Section 4850 benefits, activated by two separate injuries to different body parts, may result in a payment period greater than one year.

What Effect Do Termination, Layoff, Resignations and Retirement Have on Section 4850 Benefits?

An employer may not terminate a claimant for physical fitness reasons after an injury to avoid paying Section 4850 benefits[13] or even terminate a claimant in good faith for economic reasons after an injury.[14] The courts have reasoned that Section 4850 benefits are not salary, per se, but workers' compensation benefits, and as such, should be paid as temporary disability would be paid, until the claimant is back to work or retired on permanent disability. However, an employee may be validly terminated for misconduct during the time he or she is receiving benefits under Section 4850, thus releasing the employer from providing Section 4850 benefits.[15] The rationale for this exception is that benefits are proper only where the employee would have been receiving wages or salary had he or she not been disabled. Here, the employee would not be receiving wages because he or she would have been validly terminated for misconduct regardless of disability. Likewise, if an employee is offered a job within his or her abilities and the employee refuses the job, Section 4850 benefits do not have to be paid.[16]

In contrast, an employee who unconditionally tenders his or her resignation from employment effective a given date is not thereafter entitled to a leave of absence under Section 4850.[17] The courts have held that a resignation is in the nature of a notice of termination of a contract of employment.

With regard to the effect of retirement on Section 4850 benefits, the statute indicates that such benefits are terminated by receipt of a permanent disability pension under both PERS and CERL. Section 4850.3 allows advanced disability pension payments to be made to any local safety officer qualifying under Section 4850. These advanced disability pension payments may be made only after all sick leave payments have been exhausted. Advanced payments made under this section are reimbursable by the retirement system once retirement benefits are granted and actual retirement payments commence.

With the receipt of a PERS disability pension or advances, Section 4850 benefits cease, along with the employee's right to a vocational rehabilitation maintenance allowance (VRMA).[18] If it is determined that an employee no longer has the capacity to perform the duties of his or her position, the employer may apply for the employee's PERS retirement.[19] However, involuntary retirement is not legally effective in terminating Section 4850 benefits unless the employee is permanent and stationary.[20] Permanent and stationary includes completion or termination of vocational rehabilitation.[21] The defendant can take the position that an interruption of services is sufficient to conclude Section 4850 for an employee who is otherwise permanent and stationary. Therefore, involuntary retirement may cut off Section 4850 benefits only if the employee is permanent and stationary and vocational rehabilitation has been terminated or completed.[22]

In contrast, under CERL, an employee is entitled to receive rehabilitation indemnity even though he or she is receiving his disability pension.[23] The court in Burns. V. WCAB reasoned that Section 4853, which specifically excludes PERS members from receiving both temporary disability or rehabilitation indemnity and disability retirement benefits concurrently, did not apply to CERL employees. Thus, a CERL employee may receive both temporary disability and VRMA benefits while receiving a disability retirement, whereas a PERS member cannot.

Conclusion

A wise counselor will consider the following four items when faced with a possible Section 4850 benefit. First, what is the employee's retirement system, or has the agency elected to extend Section 4850 benefits regardless? Second, looking at the local contract, MOU, or CBA, is the employee's classification sworn or not? Has an "active public safety" employee been "reclassified" by the employer to avoid Section 4850 obligations? What are the employee's actual duties? Third, under the local contract, what is the base salary, and the sick leave/holiday

benefit language? Last, before terminating indemnity benefits because a disability retirement is granted, ask again, what is the employee's retirement system? Was it an involuntary retirement? Are temporary disability or VRMA benefits outstanding? In this way Section 4850 benefit miscalculations and penalties may be avoided.

Endnotes

* *Pamela Owens is a defense attorney and associate in the Redding office of Laughlin, Falbo, Levy & Moresi. This article was reprinted with permission from the Worker's Compensation Quarterly, a publication of the Workers' Compensation Section of the State Bar of California.*

1 Lifeguards must be located in a first class county (population greater than 400,000).
2 See also similar "full salary" employees.
3 *Biggers v. WCAB* (1999) 99 C.D.O.S. 618.
4 This decision may be appealed to the California Supreme Court.
5 *Charles v. Board of Admin.* PERS (1991) 232 Cal. App.3d 1410.
6 *Campbell v. Monrovia* (1978) 84 Cal. App.3d 341; See also, *Mannetter v. County of Marin* (1976) 62 Cal. App.3d 518.
7 *Smith v. WCAB* (1975) 45 Cal. App. 3d 162.
8 *Johnson v. City of Contra Costa County Fire Protection Dist.* (1972) 23 Cal. App.3d 86.
9 *Robertson v. City of Inglewood* (1978) 84 Cal. App.3d 400. (Whether sick leave may either be exhausted or offset against Section 4850 benefits attaches to older forms of labor contracts and is not prevalent in current labor contracts. For application to older labor contract forms, see *Anderson v. Union Oil Co. of California* (1975) 49 Cal. App.3d 968 and *Austin v. City of Santa Monica* (1965) 234 Cal. App.2d 841.)
10 *Kosowski v. WCAB* (1985) 170 Cal. App.3d 632.
11 *Hupp V. WCAB* (1995) 39 Cal. App.4th 84; But see a recent contrary WCAB decision, holding that an injured worker's outside employment earnings that are the same before as after the injury may not be deducted from Section 4850 benefits. *Orrego v. City of Emeryville* (1995) 23 CWCR 232.
12 *Austin v. City of Santa Monica* (1965) 234 Cal App.2d 841.
13 *Boyd v. City of Santa Ana* (1971) 6 Cal.3d 393.
14 *California City v. Finklea* (1979) 95 Cal. App.3d 329.
15 *County of San Diego v. WCAB* (Dibb) (1996) 61 CCC 117 (not published; not citable in judicial actions)
16 *Etchells v. WCAB* (1985) 175 Cal. App.3d 168.
17 *Collins v. County of Los Angeles* (1976) 55 Cal. App.3d 594.
18 See *Eason v. City of Riverside* (19650 233 Cal. App.2d 190 (4850 cessation); Gorman v. WCAB (1979) 88 Cal. App.3d 43 (VRTD cessation): *Richie v. WCAB* (1994) 24 Cal. App.4th 1174 ,review denied, (VRTD cessation).
19 *Gourley v. City of Napa* (1975) 48 Cal. App.3d 156.
20 See California Government Code Section 21164.
21 *Girard v. West Sacramento Police Department* (1997) 25 CWCR 339.
22 See *Girard, supra*; see also California Government Code Section 21164; *Tognetti v. Town of Hillsborough* (1992) Case #SF 0354134 and 0356695.
23 *Burns v. WCAB* (1987) 190 Cal. App.3d 759.

Public Lawyer of the Year Award

2000

Do you know a public law practitioner who deserves special recognition because of outstanding services to the public?

If so, that person could be the recipient of the Public Law Section's "2000 Outstanding Public Law Practitioner" award because of your nomination.

Each year the Public Law Section honors a public lawyer selected by the Public Law Executive Committee from nominations sent in by members of the Public Law Section, the State Bar, and the public at large.

For the award, the Public Law Executive Committee is looking for an active, practicing public lawyer who meets the following criteria:

1. at least 5 years of recent, continuous practice in public law
2. an exemplary record and reputation in the legal community
3. the highest ethical standards

Rather than a political figure or headliner, the ideal recipient would be a public law practitioner who has quietly excelled in his or her public service. Just as the Public Law Executive Committee supports the goal of ethnic diversity in the membership and leadership of the State Bar, a goal in selecting the 2000 Outstanding Public Law Practitioner will be to ensure that the achievements of all outstanding members of the Bar who practice Public law, especially women and people of color, are carefully considered.

Nominations are now being accepted. The 2000 Outstanding Public Law Practitioner award will be presented at the Annual State Bar Convention in San Diego in September 2000.

Send nominations, no later than 12:00 midnight, June 1, 2000, to:

Tricia Horan
Public Law Section
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180 Howard Street,
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Nominations can also be submitted on-line at www.calbar.org/2sec/3pls/4nomin.htm.

To nominate an individual for this award, fill out the official nomination form below.

Nominee's Name: _____

Nominator's Name: _____ **Place of Business:** _____

Telephone Number: _____ **Years of Public Law Practice:** _____

Brief Statement why Nominee deserves recognition: _____

_____

_____

_____

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Message From The Chair

By Paul A. Kramer

"Ensure that laws affecting the public sector are enacted and implemented in a manner which is clear, effective, and serves the public interest. Advance public service by recognizing the important contributions of public law practitioners. Provide resources for public law practitioners through publications, continuing education and other projects. Identify and analyze the unique ethical issues affecting public lawyers."

Those words from the Public Law Section's Mission Statement pretty well sum up what we, the Executive Committee, are trying to do. Some parts are easier than others but none too easy. And your help is key. In identifying candidates for our Public Lawyer of the Year award. In volunteering to serve on the Executive Committee. In writing informative articles for this Journal.

A significant, but overlooked contribution, is the simple act of belonging to the Section, sending in your dues every year. A significant number of our colleagues who share our interests have not taken the time to do so. We need your help in convincing them to join us. We need to show the Bar that public lawyers want to stand up and be counted, and listened to. No less than the current President of the ABA, William G. Paul, has argued that we must encourage public lawyers to participate in the organized bars.

In reality, that is probably more important than the extra income we'd derive because, under the current funding formula, two thirds of our dues revenue is immediately returned to the Bar to pay administrative costs. I encourage you to share this issue of the Journal with your colleagues who don't seem to have one of their own. Then encourage them to join so that they can have their own copies.

For most of our existence, our primary method of communication with you has been this Journal. In the last couple of years, however, we've harnessed the Internet and can now use it (look for the address at the bottom of this page) to communicate more freely, quickly and inexpensively. We hope that, by the time you read this, we'll have a password protected area on our Internet site that will allow us to deliver services only to our members. That's fair, after all, since you members support the Section and make this Journal and our other efforts possible. If you have any ideas as to how we could put a member's only area to use, send them to me at publiclaw@hotmail.com.

Now Open!

MEMBERS ONLY WEB PAGE ACCESS

By the time you receive this issue, we expect that the Public Law Section's web page will have its members only page up and running. We'll be moving some of our content to that page, including:

- Updated reports of the Public Law Section's Legislative Subcommittee on pending state legislation.
- Public Law Internet Links.
- Notes of developments of interest to section members.

For information about how to access these pages, send an email to: publiclaw@hotmail.com. We are also considering the creation of a public lawyer's discussion area. Send us an email if you're interested in that feature or have ideas for additional features for the public or members only areas of our site.

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